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 5
    Indemnity Company
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                             UNITED STATES DISTRICT COURT
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                           WESTERN DISTRICT OF WASHINGTON
                                        AT SEATTLE
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    DEVELOPERS SURETY AND
    INDEMNITY COMPANY, a
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    California corporation,
                                                Case No.:
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                        Plaintiff,
                                                COMPLAINT FOR DECLARATORY
                                                RELIEF
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           v.
                                                JURY DEMAND
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    MICHAEL MCKELVEY COMPANY, LLC,
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    a Washington State limited liability
    company; RICHARD GUSTAV and
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    FRANCES GUSTAV, individually and the
    marital community comprised thereof; RIFT
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    CUT CONSTRUCTION, LLC, a
    Washington State limited liability company;
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    STATE FARM FIRE AND CASUALTY
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    COMPANY, an Illinois corporation; and
    SAFECO INSURANCE COMPANY OF
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    AMERICA, a New Hampshire corporation,
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                        Defendants.
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           For its Complaint against defendants Michael McKelvey Company, LLC ("McKelvey"),
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    Richard Gustav and Frances Gustav, individually and as a marital community ("Gustavs"), Rift
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    Cut Construction, LLC ("Rift Cut"), State Farm Fire and Casualty Company ("State Farm"), and
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    Safeco Insurance Company of America ("Safeco"), plaintiff Developers Surety and Indemnity
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    Company ("Developers") alleges as follows:
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**Parties** 

- 1. Developers is an insurance company organized under the laws of the State of California and is authorized to do business in the State of Washington. Developers' principal place of business is in the State of California.
- 2. State Farm is an insurance company organized under the laws of the State of Illinois with its principal place of business in the State of Illinois.
- 3. Safeco is an insurance company organized under the laws of the State of New Hampshire with its principal place of business in the State of New Hampshire.
- 4. McKelvey is a limited liability company organized under the laws of the State of Washington and at all relevant times was licensed to do business as a general contractor in the State of Washington. Based on information and belief, the members of McKelvey are domiciled in the State of Washington.
- 5. Rift Cut is a limited liability company organized under the laws of the State of Washington and at all relevant times was licensed to do business as a general contractor in the State of Washington. Based on information and belief, the members of Rift are domiciled in the State of Washington.
- 6. The Gustavs are a married couple domiciled in King County, Washington, and jointly own property located at 8622 Fauntlee Crest SW, Seattle, Washington 98136.

## Jurisdiction and Venue

- 7. This court has jurisdiction under 28 U.S.C. Section 1332 in that complete diversity exists between Developers, on the one hand, and the defendants on the other, and the amount in controversy exceeds \$75,000.
- 8. An actual controversy exists between the parties regarding Developers' obligations under certain liability insurance policies that it issued to McKelvey and Rift Cut. Under 28 U.S.C. Section 2201, Developers is entitled to a declaration from this Court regarding those obligations.

9. Under 28 U.S.C. Section 1391, venue is proper in this judicial district as the Gustavs, McKelvey and Rift Cut reside in this district. In addition, this action involves a dispute regarding the availability of insurance coverage for damages that allegedly arose from events in this judicial district.

# **Background**

- 10. Developers issued McKelvey a commercial general liability policy of insurance number BIS00024156-03 ("McKelvey Policy") which was effective from January 6, 2018 to January 6, 2019. A copy of the policy is attached as Exhibit 1.
- 11. Developers issued Rift Cut a commercial general liability policy of insurance number BIS00027694-02 ("Rift Cut Policy") which was effective from March 22, 2018 to March 22, 2019. A copy of the policy is attached as Exhibit 2.
- 12. State Farm provided casualty insurance to the Gustavs for their property located at 8622 Fauntlee Crest SW, Seattle, Washington, 98136 ("Subject Property 1").
- 13. Safeco provided casualty insurance to Ann Erickson for her property located at 8624 Fauntlee Crest SW, Seattle, Washington 98136 ("Subject Property 2").
- 14. At all material times, McKelvey is alleged to have provided general contractor services to conduct a remodel of Subject Property 1.
- 15. At all material times, McKelvey is alleged to have conducted business under the name Rift Cut.
- 16. During the course of the remodel work, a fire occurred at Subject Property 1, which spread to Subject Property 2. The fire is alleged to have been caused by the spontaneous combustion of stain-soaked cotton cloths which were left at Subject Property 1 by a painting contractor.
- 17. The owners of Subject Property 1 submitted a claim to State Farm pursuant to their insurance policy, and State Farm allegedly paid approximately \$2.1 million under the policy.

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- 18. The owner of Subject Property 2 submitted a claim to Safeco pursuant to her insurance policy, and Safeco allegedly paid approximately \$17,000 under the policy.
- 19. State Farm, Safeco, the Gustavs filed an action against McKelvey, Rift Cut, and the painting contractor in the Superior Court of the State of Washington, in and for the County of King (the "Underlying Lawsuit"). A copy of the Complaint filed in the Underlying Lawsuit is attached as Exhibit 3.
- 20. State Farm and Safeco allege in the Underlying Lawsuit that they are legally and contractually subrogated to all rights and remedies that their insureds may have against McKelvey and Rift Cut, to the extent of their respective payments made under their insurance policies.
- 21. The Gustavs allege in the Underlying Lawsuit that they suffered uninsured losses associated with the fire at Subject Property 1, totaling approximately \$700,000.
- 22. The Underlying Lawsuit asserts claims against McKelvey and Rift Cut for negligence and breach of contract.
- 23. McKelvey and Rift Cut tendered the Underlying Lawsuit to Developers for defense and indemnity.
- 24. Claims Resource Management, Inc., on behalf of Developers, acknowledged receipt of the tenders, investigated the tenders under full and complete reservations of rights, and retained counsel to defend McKelvey and Rift Cut in the Underlying Lawsuit.
- 25. Developers seeks a declaration as to its duty to defend and indemnify under the policies issued to McKelvey and Rift Cut.

#### **CLAIM FOR RELIEF**

# (Declaratory Relief under 28 U.S.C. Section 2201)

26. Developers incorporates by reference herein the allegations set forth in paragraphs 1 through 25 above.

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- 27. A present and actual controversy exists regarding the respective rights of Developers and its insureds under the policies, and Developers' obligations, if any, to defend and indemnify its insureds against the Underlying Lawsuit.
- 28. Developers seeks and is entitled to a declaration of the rights of the parties pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. Section 2201.
- 29. Developers seeks a legal determination and declaration that it has no duty to defend or indemnify McKelvey and Rift Cut under the terms, conditions, exclusions and endorsements contained in its policies, and pursuant to law in relation to the Underlying Lawsuit.
- 30. A declaratory judgment is both necessary and proper at this time and does not prejudice McKelvey or Rift Cut in the Underlying Lawsuit. Such a declaration is necessary and appropriate in order for the parties, and each of them, to ascertain their rights and duties under the policies.

#### **DEMAND FOR JUDGMENT**

Developers demands that judgment be entered declaring that Developers does not owe any duty to defend or indemnify McKelvey and/or Rift Cut against the claims asserted in the Underlying Lawsuit, awarding Developers costs and expenses, and any other relief the Court deems appropriate.

DATED this 22<sup>nd</sup> day of June, 2021.

### GILBERT | LEVY | BENNETT

By: <u>s/Elizabeth D. MacGregor</u>
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